

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

KIM SMITH, :  
Petitioner :  
 :  
vs. : CIVIL NO. 1:CV-05-1269  
  
PENNSYLVANIA BOARD OF PROBATION :  
AND PAROLE, AGENT BERTOCKI, :  
NORTH SHORE OFFICE SUPERVISOR, :  
and DISTRICT OFFICE SUPERVISOR, :  
Respondents :

O R D E R

AND NOW, this 15th day of June, 2006, upon consideration of the report (doc. 25) of the magistrate judge, filed March 30, 2006, and the objections that were filed, and upon independent review of the record, it is ordered that:

1. The magistrate judge's report is adopted.
2. The petition under 28 U.S.C. § 2254 is denied based on Petitioner's state-court procedural default.
3. A certificate of appealability is denied.<sup>1</sup>
4. The Clerk of Court shall close this file.

/s/William W. Caldwell  
William W. Caldwell  
United States District Judge

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<sup>1</sup> Petitioner nonetheless has the right to appeal this order as long as he also seeks a certificate of appealability from the court of appeals. See Federal Rule of Appellate Procedure 22.